IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

Bail Appl..No. 5624 of 2007()

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CRIME NO. 569/07 OF ERNAKULAM TOWN NORTH POLICE STATION

PETITIONER/ACCUSED

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SIRAJUDHEEN,AGED 47 YEARS,
S/O. LATE P.A.SYED MUHAMMED,
HIRA, KANJIRAMATTOM,ERNAKULAM DISTRICT.

BY ADV. SRI.K.S.HARIHARAPUTHRAN

RESPONDENTS: RESPONDENTS

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1. CIRCLE INSPECTOR OF POLICE,
POLICE STATION,ERNAKULAM TOWN NORTH,
KOCHI CITY,REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
POLICE STATION, ERNAKULAM TOWN NORTH,
KOCHI CITY,REP BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA AT ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 20/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R. BASANT, J.**

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B.A.No. 5624 of 2007

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Dated this the 20th day of September, 2007

**O R D E R**

Application for anticipatory bail. Petitioner is the accused in a crime registered for offences punishable, inter alia, under Sections 406 and 465 I.P.C. The crux of the allegations against the petitioner is that he as an employee of the defacto complaint had won his confidence and the defacto complainant had completely trusted the petitioner in connection with the business carried on by him. It is alleged that a cheque leaf of the defacto complainant was misused and was presented to the bank for collection. The bank officer suspected the genuineness of the signature and information was passed on to the defacto complainant. The defacto complainant rushed to the bank and the fraudulent misdeeds were detected. There was allegedly a promise to repay the amounts, which had been siphoned out by the petitioner. That promise was not abided by. This prompted the defacto complainant to file a complaint before the police. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the real story is very different. The petitioner was employed as an employee of the defacto complainant. An amount of Rs.50,000/- was paid as security by the petitioner. He had worked for about six months. Salary at the rate of Rs.5,000/- was paid for only two months. The petitioner wanted to leave the employment. He had demanded return of the deposit and payment of the arrears of salary. This had infuriated the defacto complainant. He had embarked on a dubious method and the petitioner and his wife were, under duress, were compelled to sign some documents. The petitioner had filed complaint before the police and the learned Magistrate. F.I. statement was lodged. The petitioner is innocent. He may be saved of the undeserved trauma of arrest and detention, submits the learned counsel.

3. The learned Prosecutor vehemently opposes the application. He submits that the case diary reveals the attempt to commit forgery of the cheque of the defacto complainant and detection of such fraudulent act by the officers of the bank. There is absolutely no reason to suspect or doubt the version of the defacto complainant at this stage, submits the learned Prosecutor. At any rate, this is not a fit case where directions under Section 438 Cr.P.C. can or ought to be invoked in

favour of the petitioner. The petitioner deserves to be interrogated effectively for the proper resolution of the controversy in the case. The petitioner may not be granted anticipatory bail, submits the learned Prosecutor.

4. The case diary has been placed before me. I have scanned through the same. I find merit in the opposition by the learned Prosecutor. I shall not embark on a detailed discussion on the merits about the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that I do not find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. This I am satisfied is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioner appears before the Investigating Officer or the learned Magistrate having jurisdiction and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned

Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

**(R. BASANT)**
Judge

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